

MAR 15 1994

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE 86-8 AS AMENDED BY ORDINANCE 86-25 AND ORDINANCE 90-23, WHICH PROVIDES FOR REGULATION OF THE CONSTRUCTION TRADES; AMENDING AND ADDING TO PORTIONS OF SECTION 2, VIOLATIONS; AMENDING AND ADDING TO SECTION 3, DEFINITIONS; AMENDING AND ADDING TO SECTION 5, ENFORCEMENT; AMENDING AND ADDING TO SECTION 6, EFFECT OF CITATION; PROCEDURE; AMENDING AND ADDING TO SECTION 7, PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the construction industry is a matter substantially affecting the public interest; and

WHEREAS, to protect the health, safety, and general welfare of the public it is necessary to ensure that individuals engaged in the construction industry are duly qualified and that construction is done according to code; and

WHEREAS, changes are necessary to Ordinance 86-8 as amended by Ordinance 86-25 and Ordinance 90-23 to ensure compliance with laws regulating contractors.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, as follows:

PART I. AMENDMENT TO ORDINANCE 86-8 AS AMENDED BY ORDINANCE 86-25 AND ORDINANCE NO. 90-23

Palm Beach County Ordinance 86-8 as amended by Ordinance 86-25 and Ordinance 90-23 is hereby amended as follows:

Section 1.

This ordinance is intended to facilitate the uniform, orderly, and comprehensive enforcement of construction trade ordinances in Palm Beach County.

Section 2. Violations

It shall be a violation of this ordinance for any person, individual, partnership, corporation, firm, association, or entity to:

(a) Engage in the business of contracting in the construction trades regulated pursuant to Chapter 489, Parts I and II, Florida

1 Statutes (1991), as amended from time to time; Chapter 67-1876,
2 Laws of Florida, as amended from time to time; and any rules and
3 regulations promulgated under either without being in compliance
4 with all of said statutes, said Laws of Florida, and any rules and
5 regulations promulgated under either;

6 (b) Intentionally furnish any materially false, misleading, or
7 misrepresentative information on an application for permit;

8 (c) Hold oneself out as being certified pursuant to said
9 Florida Statute or said Laws of Florida when not so certified;

10 (d) Hold oneself out as being licensed or registered pursuant
11 to said Statute when not so licensed or registered;

12 (e) Engage in any activity requiring a permit without having
13 obtained the appropriate permits under applicable edition of the
14 Standard Building Code, Standard Plumbing Code, Standard Mechanical
15 Code, Standard Gas Code, National Electric Code, and Standard Fire
16 Code, as such have been, or may be, amended;

17 (f) Act in the capacity of a contractor in any name other
18 than that on the certificate and/or different from the scope of
19 work for which the contractor is certified to perform;

20 (g) Fail to secure required inspections;

21 (h) Willfully or deliberately disregard or violate the
22 applicable building codes or laws of any municipality, Palm Beach
23 County, or the State of Florida;

24 (i) Falsely indicate that payment has been made for all
25 subcontracted work, labor or materials which results in a financial
26 loss to the owner, purchaser or another contractor;

27 (j) Falsely indicate that workers compensation or public
28 liability insurance are provided;

29 (k) Obtain a permit for any work in which the certificate
30 holder does not actually supervise, direct and control the
31 construction or installation covered by such permit;

32 (l) Subcontract any work which encompasses services regulated
33 by said Statute, or said Laws of Florida, to any person, firm, or
34 business organization not holding a certificate of competency for

1 the type of work involved in the subcontract;

2 (m) To advertise to the public in any publication,
3 transmission, business card, pamphlet, telephone directory, or
4 otherwise that he is a contractor, is qualified to engage in
5 business as a contractor, or that he will perform work in a trade
6 regulated by said Statute or said Laws of Florida without being
7 duly qualified to so act;

8 (n) Submit an advertisement to any publisher for placement in
9 any publication which is circulated, displayed, distributed or
10 marketed within Palm Beach County, which advertisement identifies
11 a contractor offering services regulated by said statute or said
12 Laws of Florida as they may be amended from time to time, unless
13 the advertisements include the certification number issued by the
14 State of Florida or by Palm Beach County to that contractor.
15 Nothing in this ordinance shall be construed as requiring that the
16 publisher not publish any advertisement which does not include a
17 certification number, nor determine or investigate whether a
18 certification number is required, whether the license number given
19 is accurate, nor determine or investigate whether the person for
20 whom the advertisement is published is duly licensed;

21 (o) Aid or abet any uncertified person or business
22 organization to evade any provision of this ordinance;

23 (p) Committing mismanagement or misconduct in the practice of
24 contracting that causes financial harm to a customer. Financial
25 mismanagement or misconduct occurs when:

26 1. Valid liens have been recorded against the property of a
27 contractor's customer for supplies or services ordered by the
28 contractor for the customer's job; the contractor has received
29 funds from the customer to pay for the supplies or services; and
30 the contractor has not had the liens removed from the property, by
31 payment or by bond, within 75 days after the date of such liens;

32 2. The contractor has abandoned a customer's job and the
33 percentage of completion is less than the percentage of the total
34 contract price paid to the contractor as of the time of

1 abandonment, unless the contractor is entitled to retain such funds
2 under the terms of the contract or refunds the excess funds within
3 30 days after the date the job is abandoned; or

4 3. The contractor's job has been completed, and it is shown
5 that the customer has had to pay more for the contracted job than
6 the original contract price, as adjusted for subsequent change
7 orders, unless such increase in cost was the result of
8 circumstances beyond the control of the contractor, was the result
9 of circumstances caused by the customer, or was otherwise permitted
10 by the terms of the contract between the contractor and the
11 customer; or

12 (q) Abandonment of a construction project in which the
13 contractor is engaged or under contract as a contractor. A project
14 shall be considered abandoned after 30 days if the contractor
15 terminates the project without written notification to the owner or
16 the prospective owner and without just cause, or fails to
17 substantially perform work under the contract.

18 Section 3. Definitions

19 As used in this ordinance, the following terms shall have the
20 meaning described below:

21 Advertisement - any written, oral or visual statement of
22 whatever nature or kind, appearing in any newspaper, airwave
23 transmission, telephone directory, business card, pamphlet or other
24 advertising medium, announcing, advertising or promoting services
25 regulated pursuant to said Statute or said Laws of Florida.

26 Application for permit - any permit application made under the
27 codes listed in Section 2(e) above, including all documents
28 submitted therewith.

29 Appropriate editions - the year edition of the Code listed in
30 Section 2(e) above as amended and adopted by the appropriate local
31 governmental entity.

32 Contractor - the person who is qualified for and responsible
33 for the entire project contracted for and means, except as exempted
34 in said Laws of Florida, the person who, for compensation,

1 undertakes to, submits a bid to, or does himself or by others
2 construct, repair, alter, remodel, add to, subtract from, or
3 improve any building or structure, including related improvements
4 to real estate, for others or for resale to others. A contractor
5 shall hold a certificate of competency as provided by this
6 Ordinance before bidding or performing work requiring
7 certification.

8 Control - to exercise authority or dominating influence over.

9 Duly Qualified - in conformance with the requirements of said
10 Statute or said Laws of Florida by being certified, licensed, or
11 registered.

12 Employee - a person who receives compensation from and is
13 under the supervision and control of an employer who regularly
14 deducts the F.I.C.A. and withholding tax and provides worker's
15 compensation, all as prescribed by law.

16 Investigator - an individual authorized by the applicable
17 local governmental entity through ordinance, resolution, policy, or
18 administrative order, to enforce the provisions of this ordinance,
19 who has the authority to issue notices to appear; including the
20 Construction Industry Licensing Board Director, Certification
21 Coordinator and investigators.

22 Licensed - licensed as required pursuant to said Statute.

23 Registered - registered as required pursuant to said Statute.

24 Regulated - required to be certified, licensed, and/or
25 registered pursuant to said Statute or said Laws of Florida;
26 excluding those trades or activities not subject to, or
27 specifically exempt from, said Statute or said Laws of Florida.

28 Required Inspections - all inspections necessary to comply
29 with the Building, Electric, Gas, Mechanical, Plumbing Codes as
30 adopted by the Palm Beach County Board of County Commissioners as
31 outlined in the Building Codes Enforcement Administrative Code
32 Section 103.8.6 as amended from time to time or any other
33 inspections required by a Building Official. For a new building,
34 required inspections include all inspections required prior to

1 issuance of a certificate of occupancy.

2 Said Laws of Florida - Chapter 67-1876, Laws of Florida, as
3 amended from time to time, and any rules or regulations adopted
4 thereunder.

5 Said Statute - Chapter 489, Florida Statutes, Parts I and II
6 (1991) as such may be amended from time to time, and any rules or
7 regulations adopted thereunder.

8 Supervision - familiarity with building plans and sites,
9 periodic inspection of the site and review of the job for
10 compliance with building plans and applicable codes, and ultimate
11 responsibility for the work performed.

12 Section 4. Applicability

13 The provisions of this ordinance shall apply to both the
14 incorporated and unincorporated areas of Palm Beach County pursuant
15 to Article VIII, Section 1(g), Florida Constitution, and Article 1,
16 Section 1.3, Palm Beach County Charter.

17 Section 5. Enforcement

18 (a) The Director, Certification Coordinator and investigators
19 of the Palm Beach County Construction Industry Licensing Board are
20 hereby charged with the enforcement responsibilities of this
21 ordinance. Said investigators shall become specially deputized by
22 the Palm Beach County Sheriff.

23 (b) The Construction Industry Licensing Board Director,
24 Certification Coordinator and investigators who are specially
25 deputized are hereby authorized to issue citations or notices to
26 appear for the violation of this ordinance when, based upon
27 personal investigation, the investigator has probable grounds to
28 believe that a violation of this ordinance has occurred.

29 (c) Investigators shall not have the power of physical
30 arrest.

31 (d) Law enforcement officers are authorized to enforce the
32 provisions of this ordinance.

33 (e) Municipalities within which this ordinance is effective
34 may, by ordinance, resolution, policy, or administrative order,

1 authorize individuals to enforce the provisions of this ordinance.

2 (f) The Director, Certification Coordinator and
3 investigators of the Construction Industry Licensing Board are
4 hereby authorized to inspect and audit the records of construction
5 firms to determine compliance with this ordinance, said Statute or
6 said Laws of Florida or Chapter 440, Florida Statutes, when based
7 upon reasonable suspicion that a violation of any law or ordinance
8 referenced in this subsection has occurred.

9 (g) The Director or Certification Coordinator of the
10 Construction Industry Licensing Board shall have the power to
11 subpoena records, surveys, drawings, contracts or other documentary
12 materials regarding activities regulated by this ordinance, said
13 Statute, said Laws of Florida, or Chapter 440, Florida Statutes,
14 when based upon reasonable suspicion that a violation of any law or
15 ordinance referenced in this subsection has occurred.

16 (h) The Director and Certification Coordinator of the
17 Construction Industry Licensing Board shall have the power to
18 subpoena telephone company records regarding telephone numbers used
19 in advertisements or listings regarding regulated activity pursuant
20 to this ordinance, said Statute, or said Laws of Florida, where
21 address of the telephone number and/or name and address of the
22 subscriber is unavailable to the investigator of the Construction
23 Industry Licensing Board. The information obtained via subpoena
24 shall be limited to the name of the person or entity who has
25 obtained phone service, the mailing address of the person or entity
26 who has obtained phone service, and the address where the phone
27 line in question is located.

28 (i) Nothing herein contained shall prohibit the County from
29 enforcing its codes or ordinances by any other means.

30 (j) Nothing herein contained shall prohibit the Construction
31 Industry Licensing Board of Palm Beach County from exercising its
32 full authority pursuant to Chapter 67-1876, Laws of Florida, as
33 amended from time to time, and Chapter 489, Parts I and II, Florida
34 Statutes (1991), as amended from time to time.

1 Section 6. Effect of Citation; Procedure

2 (a) Any person cited for violation of this ordinance shall
3 sign and accept the notice to appear indicating a promise to
4 appear in County Court.

5 (b) Any person who willfully refuses to accept and sign the
6 notice to appear shall be in violation of this ordinance and shall
7 be punished in accordance with Section 125.69, Florida Statutes.

8 (c) Any person cited with a violation of this ordinance may
9 pay the penalty in accordance with the schedule set forth in
10 Section 7 within ten (10) days of the date of receiving the notice
11 to appear with the exception of notices to appear where it is
12 alleged that customers have suffered a monetary loss.

13 (d) If the person cited follows the above procedure set forth
14 in subsection (c) above, he shall be deemed to have admitted the
15 violation and to have waived his right to a hearing on the issue of
16 the commission of the violation.

17 (e) Any person electing to appear or who is required to so
18 appear shall be deemed to have waived his right to the civil
19 penalty.

20 (f) Any person charged with a violation where there is an
21 alleged financial loss to a customer shall have a mandatory court
22 appearance.

23 Section 7. Penalties

24 (a) The penalty required for the disposition of a violation
25 of this ordinance shall be \$250.00, except as provided for in
26 Section 6 (f).

27 (b) Any person convicted under this Ordinance shall be
28 subject to the following penalties:

29 (1) A fine not to exceed \$500 or imprisonment in the
30 county jail not to exceed sixty days, or both by such fine or
31 imprisonment as provided for in Section 125.69, Florida Statutes;
32 and

33 (2) Restitution as the court may find appropriate
34 pursuant to Section 775.089, Florida Statutes (1991), as amended

1 from time to time; and

2 (3) Any other available sanction as provided by law.

3 (c) Each day of a continuing violation, each advertisement,
4 each permit, each contract, and each separate activity requiring a
5 permit shall constitute a separate violation under Section 2.

6 Section 8. Limitations on Law Enforcement Authority of Board Staff

7 Nothing herein contained shall be construed to authorize or
8 permit said investigators or the Construction Industry Licensing
9 Board Director or Certification Coordinator to perform any function
10 or duty of a law enforcement officer other than as specified
11 herein.

12 PART 2. SEVERABILITY

13 If any section, paragraph, sentence, clause, phrase, or word
14 of this ordinance is for any reason held by the Court to be
15 unconstitutional, inoperative or void, such holding shall not
16 affect the remainder of this ordinance.

17 PART 3. INCLUSION IN THE CODE OF LAWS AND ORDINANCES

18 The provisions of this ordinance shall become and be made a
19 part of the code of laws and ordinances of Palm Beach County,
20 Florida. The Sections of the ordinance may be renumbered or
21 relettered to accomplish such, and the word "ordinance" may be
22 changed to "section," "article," or any other appropriate word.

23 PART 4. SAVINGS CLAUSE

24 Except as otherwise hereby expressly amended, all other
25 provisions of Ordinance 86-8, as amended by Ordinance 86-25 and
26 Ordinance 90-23, as originally enacted are specifically preserved
27 and remain in full force and effect.

1 PART 5. EFFECTIVE DATE

2 The provisions of this ordinance shall become effective upon
3 receipt of acknowledgement by the Secretary of State.

4 APPROVED AND ADOPTED by the Board of County Commissioners of
5 Palm Beach County, Florida, on the ____ day of MAR 15 1994 1994.

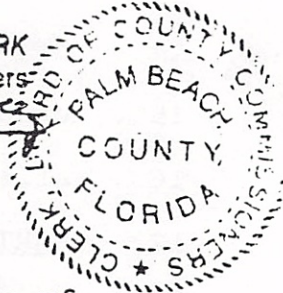
6 PALM BEACH COUNTY, FLORIDA, BY ITS
7 BOARD OF COUNTY COMMISSIONERS

8 By Mary McCarty
9 Chairman

10 APPROVED AS TO FORM AND
11 LEGAL SUFFICIENCY

12 Gary Cooper
13 County Attorney

DOROTHY H. WILKEN, CLERK
Board of County Commissioners
By Sharon Kelly
DEPUTY CLERK



14 Acknowledgement by the Department of State of the State of
15 Florida, on this, the 25th day of March, 1994.

16 EFFECTIVE DATE: Acknowledgement from the Department of State
17 received on the 30th day of March, 1994, at 1:21 p.m., and
18 filed in the Office of the Clerk of the Board of County
19 Commissioners of Palm Beach County, Florida.

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, DOROTHY H. WILKEN, ex-officio Clerk of the
Board of County Commissioners certify this to be a
true and correct copy of the original filed in my office
on 3/15/94
DATED at West Palm Beach, FL on 3/15/94
DOROTHY H. WILKEN, Clerk
By: Sharon Kelly D.C.